

# Redistricting 101

Legal Concepts That Apply to  
Redistricting in California

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Justin Levitt  
December 1, 2010

# Today's conversation

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- Similar to Feb. 25, 2010, presentation  
(produced with support of Brennan Center for Justice)
- Tailored to your task in selecting remaining Commissioners
- Updated to reflect passage of Proposition 20

# Today's conversation

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Focus on the laws that the Commission will need to apply, to let you assess traits relevant to final selection

- Specific to laws governing California redistricting
- Specific to state and federal districts  
(Commission doesn't draw local district lines)
- Legal requirements and concepts, but not legal jargon
- Requirements of California law, not advocacy

# Today's conversation

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Fleshes out the “relevant analytical skills”  
that Commissioners will need, to assist  
your selection process

# Today's conversation

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- Why?
- Where?
- What?
- When?
- Who?

# Today's conversation

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- Why?
- Where?
- What?
- When?
- Who?

# Why re-draw district lines?

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- Population moves
- Districts where there were once roughly the same number of people ... become lopsided

# Constitutional mandate to redraw lines

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Baker v. Carr, 1962

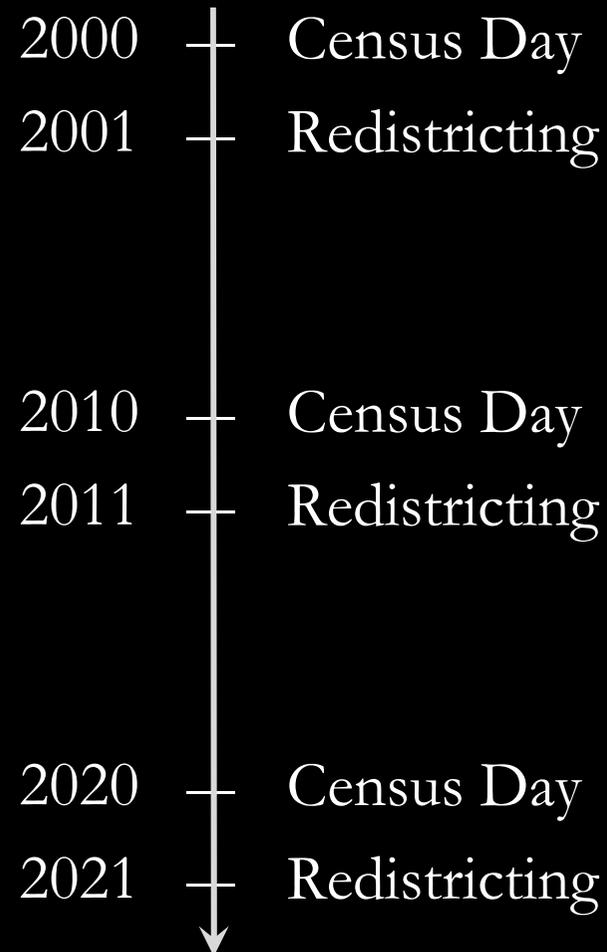
“One person, one vote”



Districts have to have roughly equal population

# And so...

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# Today's conversation

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- Why?
- Where?
- What?
- When?
- Who?

# “Where” starts with federal law

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- Equal population
- Race and ethnicity

# Equal population

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## Congress

- Population equality “as nearly as is practicable”
- Good-faith effort to achieve “precise mathematical equality”

## State legislature & BoE

- “Reasonably equal” population in each district
- Generally up to 10% difference between most populated and least populated district, for a legitimate reason

# Calculating equal population

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	Population	Deviation
District 1	1,010	+ 1.0 %
District 2	1,035	+ 3.5 %
District 3	980	- 2.0 %
District 4	940	- 6.0 %
District 5	1,005	+ 0.5 %
District 6	990	- 1.0 %
District 7	965	- 3.5 %
District 8	1,020	+ 2.0 %
District 9	1,050	+ 5.0 %
District 10	995	- 0.5 %

*Total population* 10,000  
*Average ("ideal") pop.* 1,000

# Calculating equal population

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*Total population* 10,000  
*Average ("ideal") pop.* 1,000

***Total deviation* 11.0%**

# Calculating equal population

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Commissioners will:

- Need to calculate averages and deviation from average (or review staff calculations)
- Need to understand maps of population data, to adjust districts as necessary
- Need comfort with result other than strict 1-person deviation, for state and BoE districts

# “Where” starts with federal law

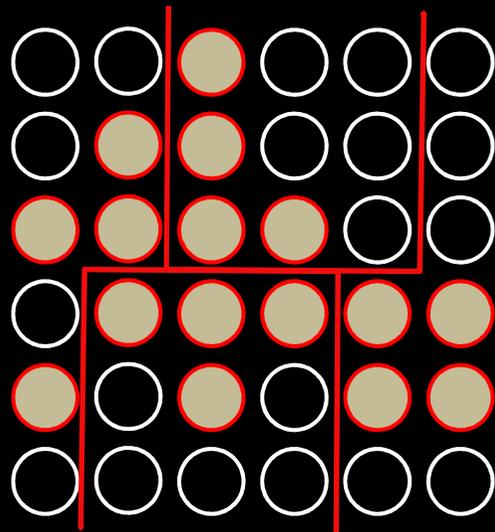
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- Equal population

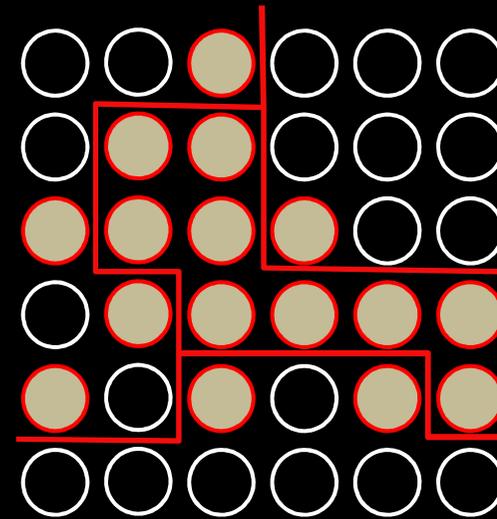
- Race and ethnicity

# Minority representation

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Cracking

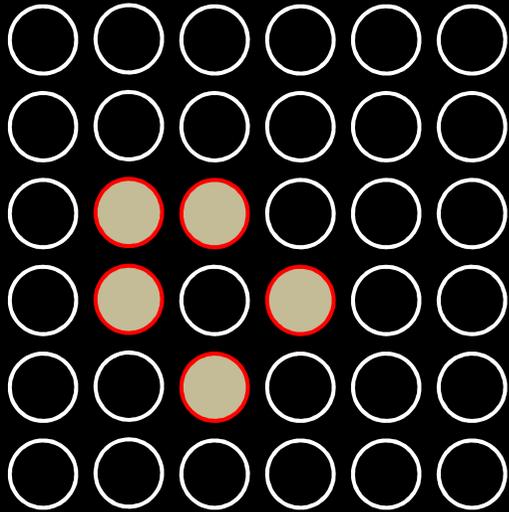


Packing

# The Voting Rights Act

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## Section 2



- Do minorities represent most of the voters in a concentrated area?
- Do others tend to vote for different candidates than minorities?
- Is the minority population otherwise protected given the “totality of the circumstances”?

# “Totality of the circumstances”

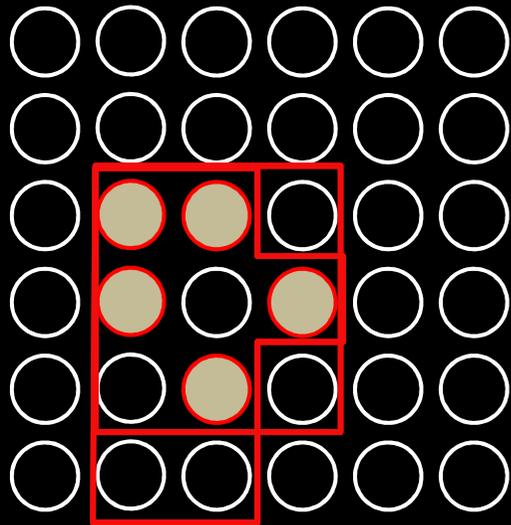
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- rough overall proportionality in the jurisdiction
- history of voting-related discrimination
- extent of racially polarized voting
- extent of discriminatory voting practices or procedures
- exclusion of minority members from candidate slating
- extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process
- extent to which minority members have been elected
- extent to which elected officials are unresponsive to the particularized needs of members of the minority group

# The Voting Rights Act

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## Section 2



- Do minorities represent most of the voters in a concentrated area?
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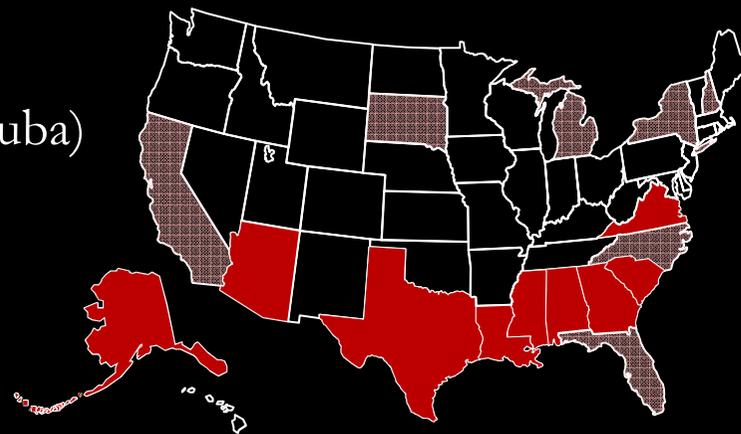
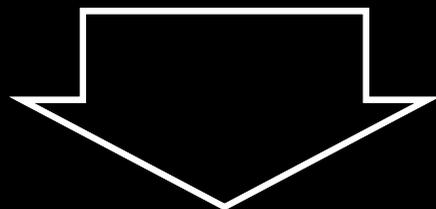
**Do Not Dilute**

# The Voting Rights Act

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## Section 5

- Preclearance  
(Kings, Merced, Monterey, Yuba)



- Is the new map intended to dilute minority votes?
- Does the new map leave minority voters worse off?

# Complying with the Voting Rights Act

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Commissioners will:

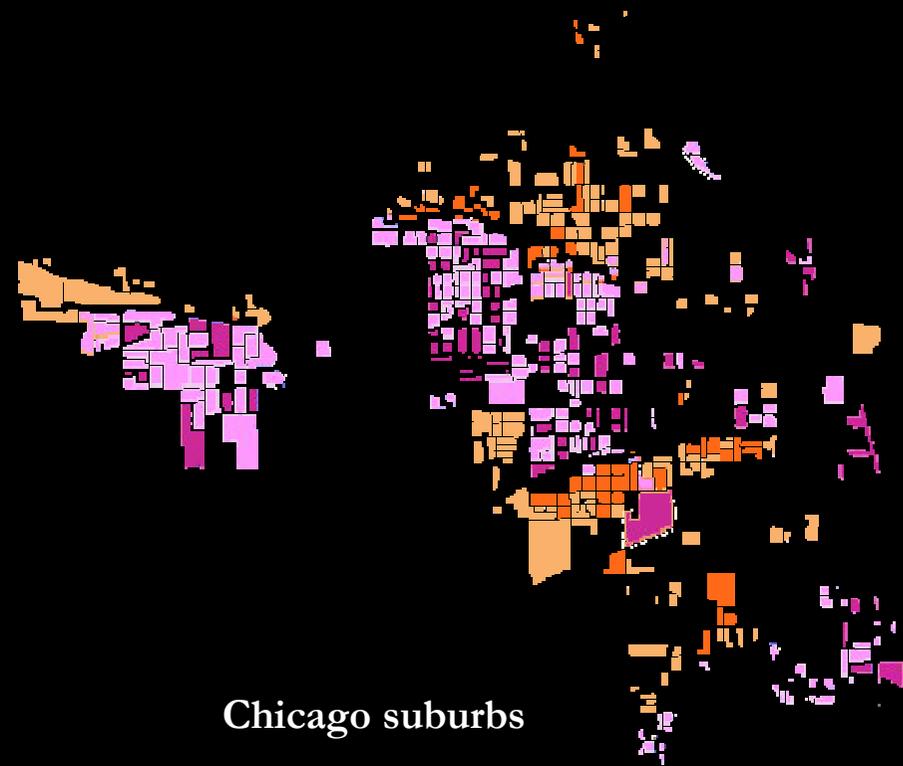
- Need to assess minority proportion of citizen voting-age population in a region (or review expert calculations)
- Need to determine voting patterns by race in that region (or review expert determinations)
- Need to assess practical opportunity to elect candidates of choice in the region (or review expert assessments)
- Need to consider qualitative and historical contextual circumstances (or review expert assessment)

# Complying with the Voting Rights Act

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Commissioners will:

- Need to creatively reconcile rights of multiple minority communities
- Need comfort drawing districts with “strange” shapes



Chicago suburbs

Latino/Hispanic

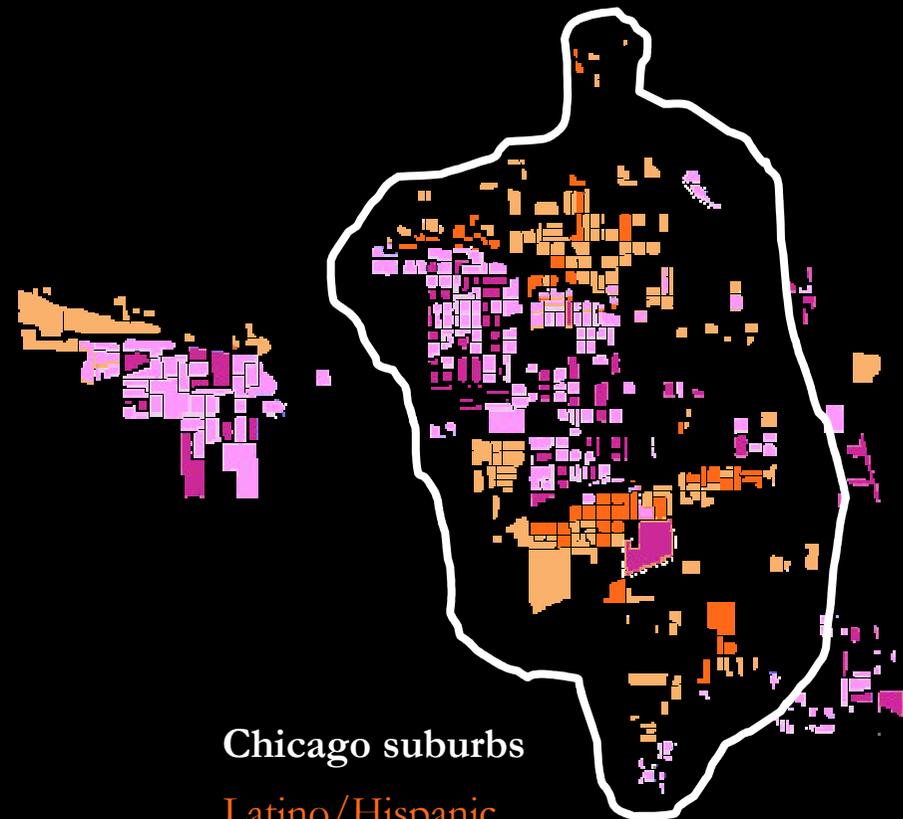
African-American

# Complying with the Voting Rights Act

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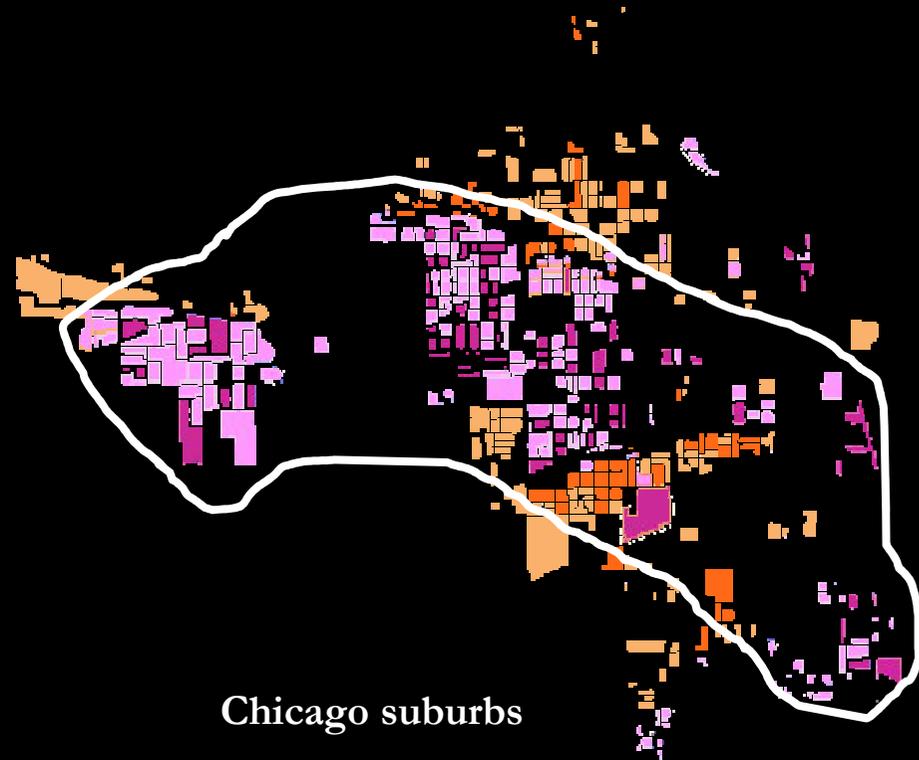
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# Complying with the Voting Rights Act

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Chicago suburbs

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African-American

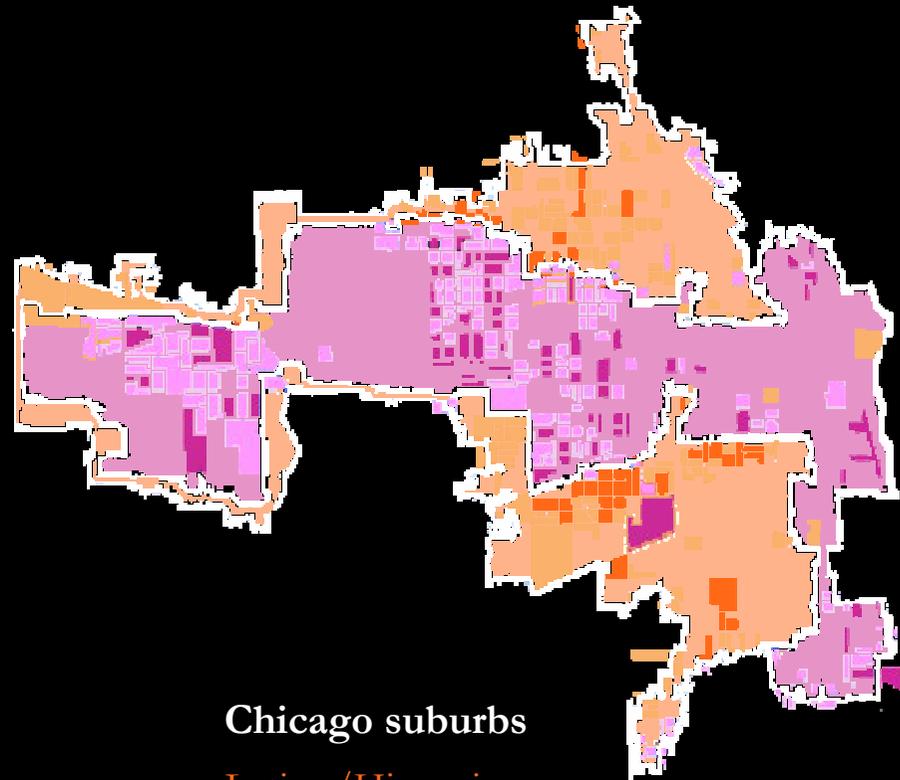
BRENNAN  
CENTER  
FOR JUSTICE

# Complying with the Voting Rights Act

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Chicago suburbs

Latino/Hispanic

African-American

# Where to draw the lines?

---

- Equal population      Federal
- Race and ethnicity      Federal
- Contiguity      State
- Political geography      State
- Compactness      State
- Nesting      State
- Political candidates      State

# Where to draw the lines?

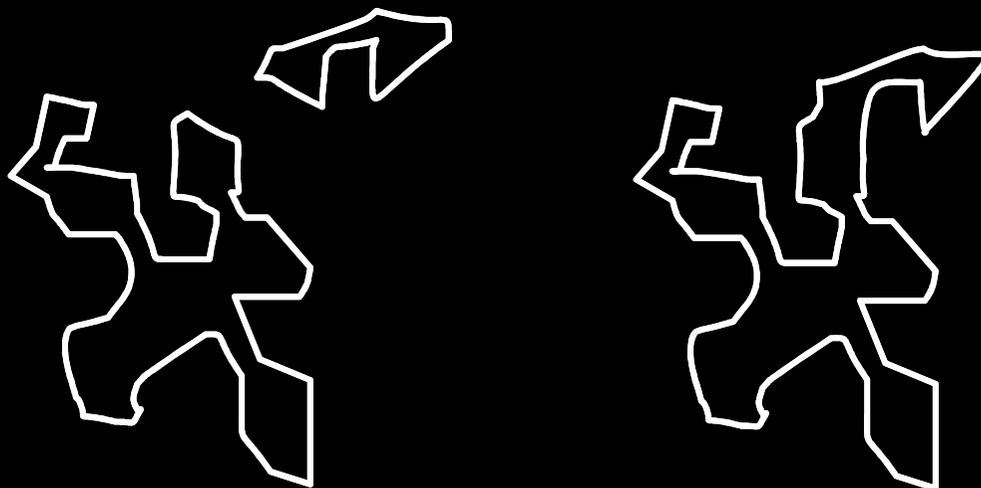
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# Contiguity

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- All parts of the district are connected to each other



# Contiguity

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- Islands create special conditions



# Contiguity

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Commissioners will:

- Need to be careful to ensure that all parts of the state are accounted for

# Where to draw the lines?

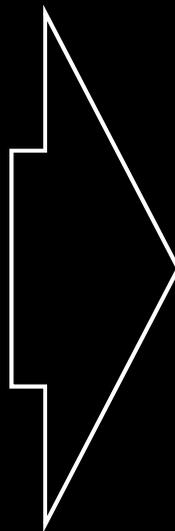
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# Political geography

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- City
- County
- Local neighborhood
- Local community of interest



“a contiguous population which shares common social and economic interests that should be included within a single district . . .”

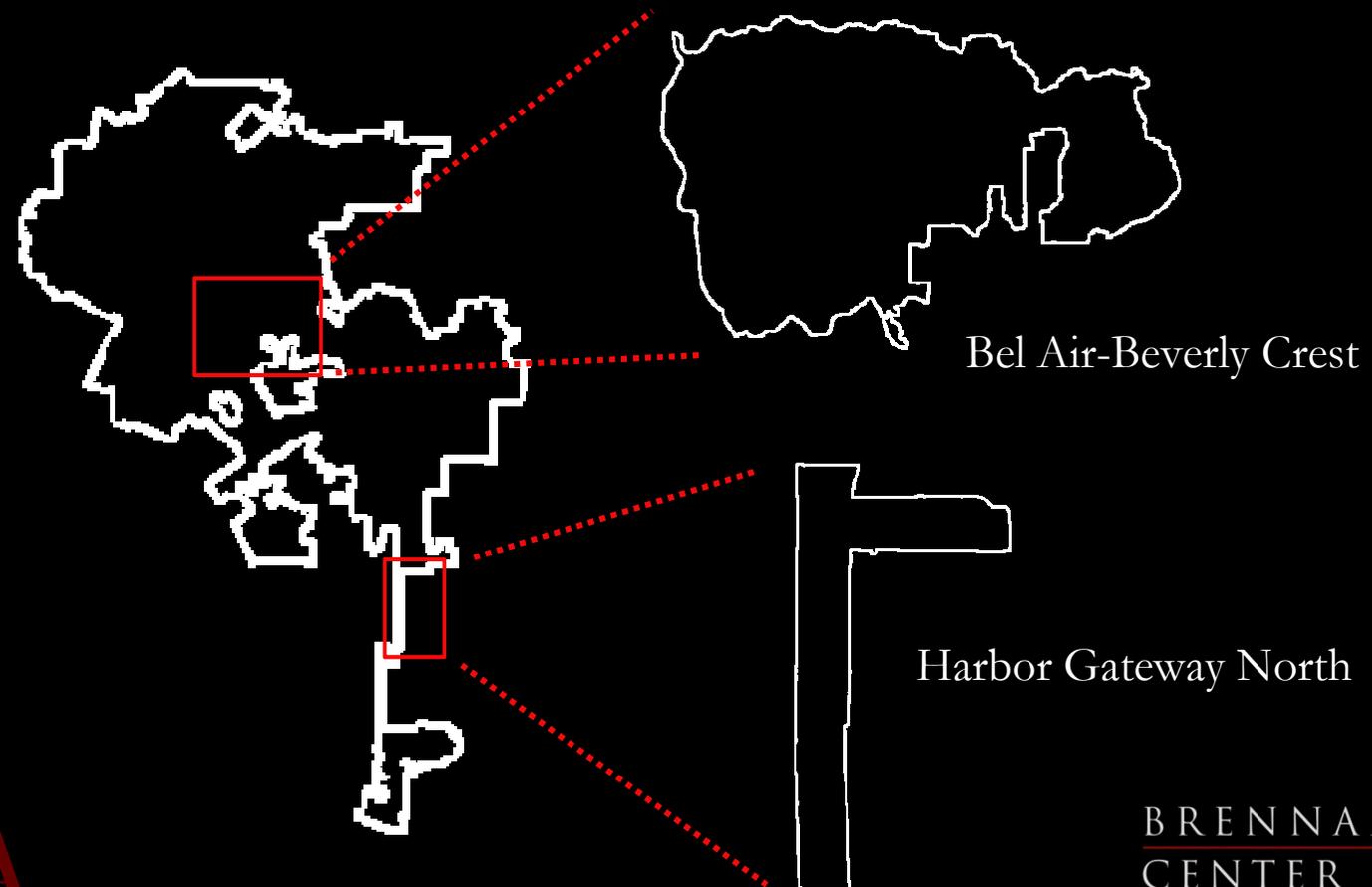
- urban
- rural
- industrial
- agricultural
- etc. . . .
- living standards
- transportation
- employment
- media markets

BRENNAN  
CENTER  
FOR JUSTICE

# These lines may be irregular

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City of Los Angeles



# These lines may be irregular

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Arizona's 2<sup>nd</sup> Congressional District



# Reconciling boundaries

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Commissioners will:

- Need to reconcile potential conflicts among geographies
- Need to reconcile potential conflicts in testimony, even when there is no “right” or “wrong”
- Need to be comfortable determining borders that are not pre-defined
- Need to be comfortable with “strange” shapes

# Where to draw the lines?

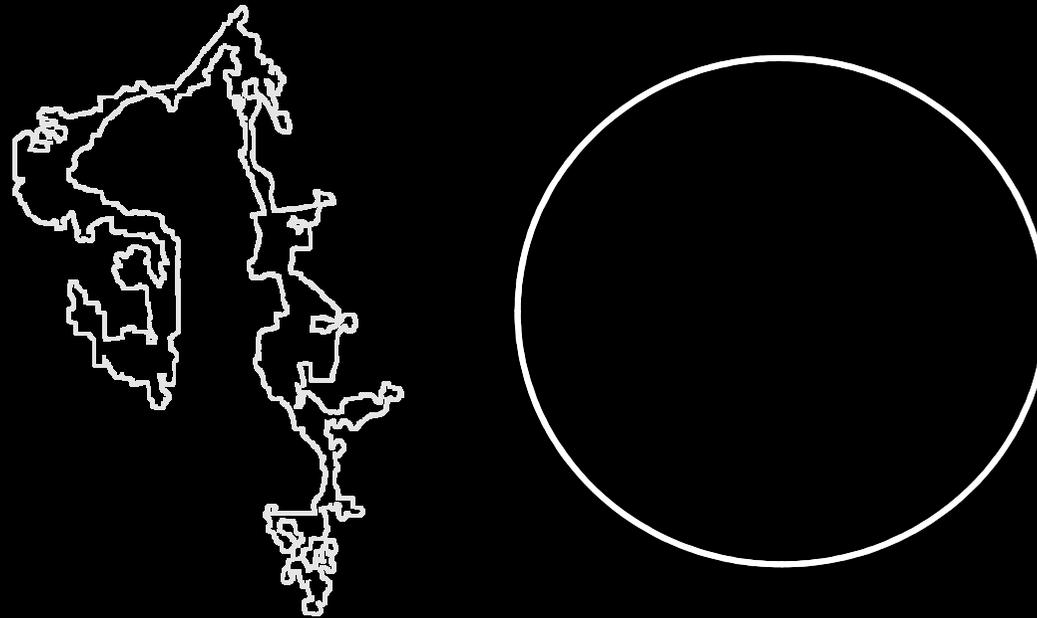
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- Equal population      Federal
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# Compactness

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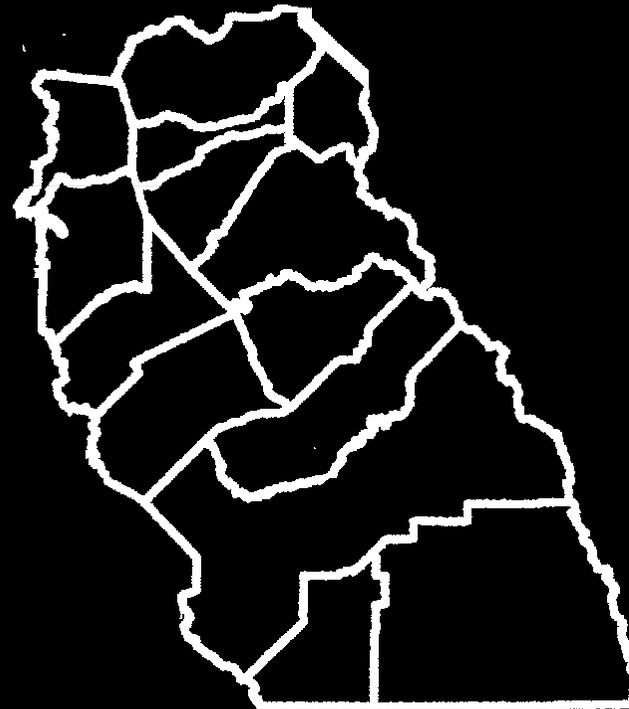
Many think of “compactness” in terms of abstract shapes



# Compactness

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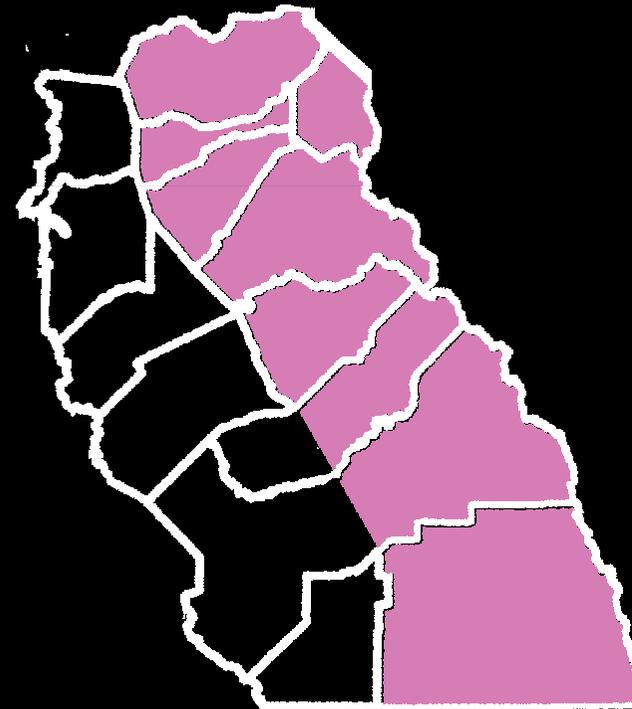
California standard: Don't bypass nearby population



# Compactness

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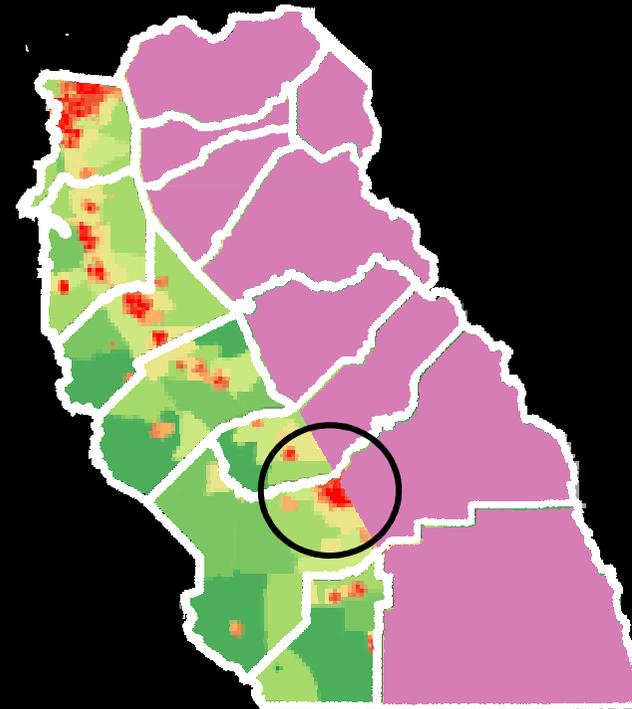
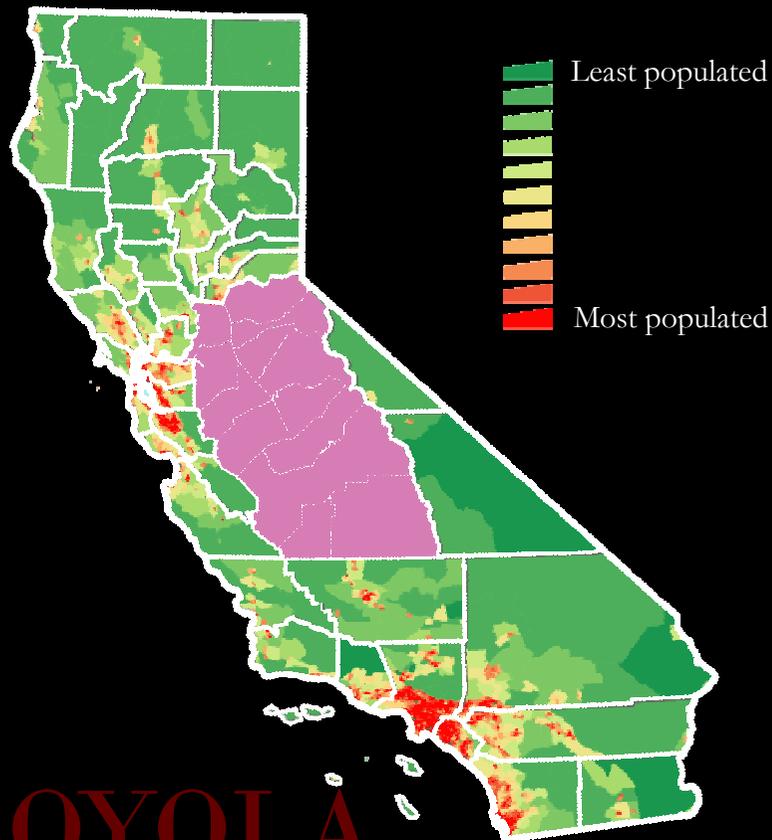
California standard: Don't bypass nearby population



# Compactness

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California standard: Don't bypass nearby population



# Compactness

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Commissioners will:

- Need to be able to identify population clusters
- Need to be comfortable with “strange” shapes and, if necessary, ignore mathematically simple ones

# Where to draw the lines?

---

- Equal population      Federal
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- Political candidates      State

# Nesting

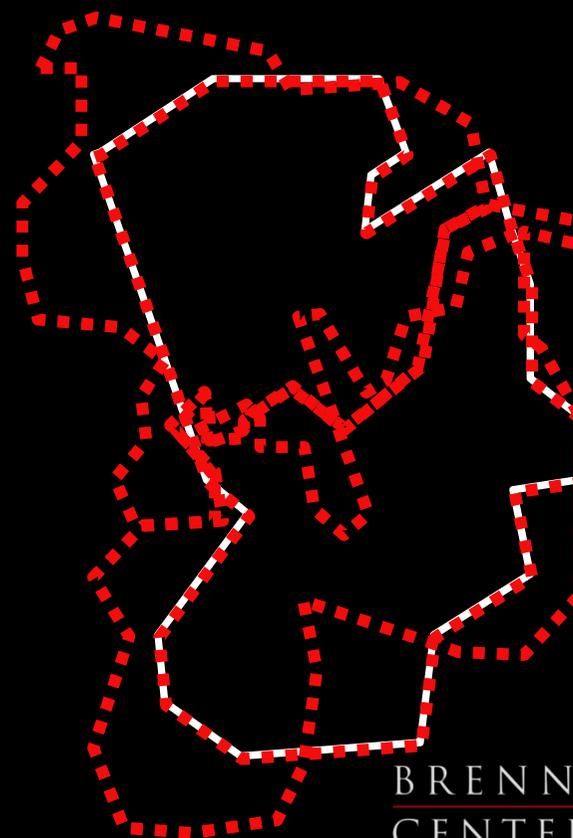
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Senate ———  
Assembly - - - - -

Not nested



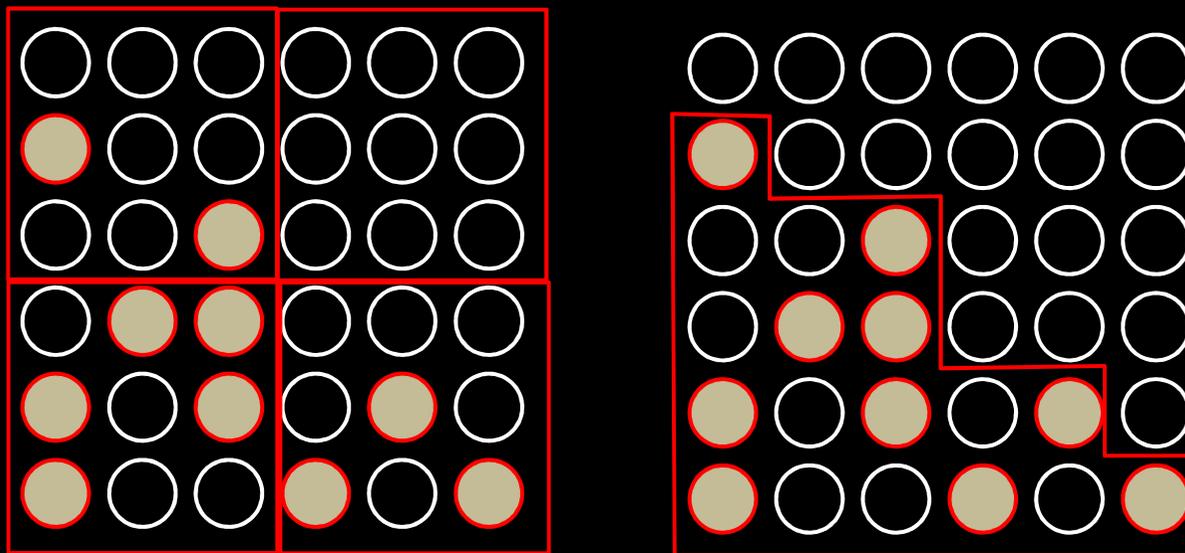
Nested



# Nesting

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A valid map for state Senate, Assembly, or Board of Equalization can lead to an invalid map for one or more of the others



# Nesting

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Commissioners will:

- Need to be comfortable re-evaluating one valid map if it leads to an invalid map for a different chamber
- Need to be comfortable with deviating from nesting where necessary

# Where to draw the lines?

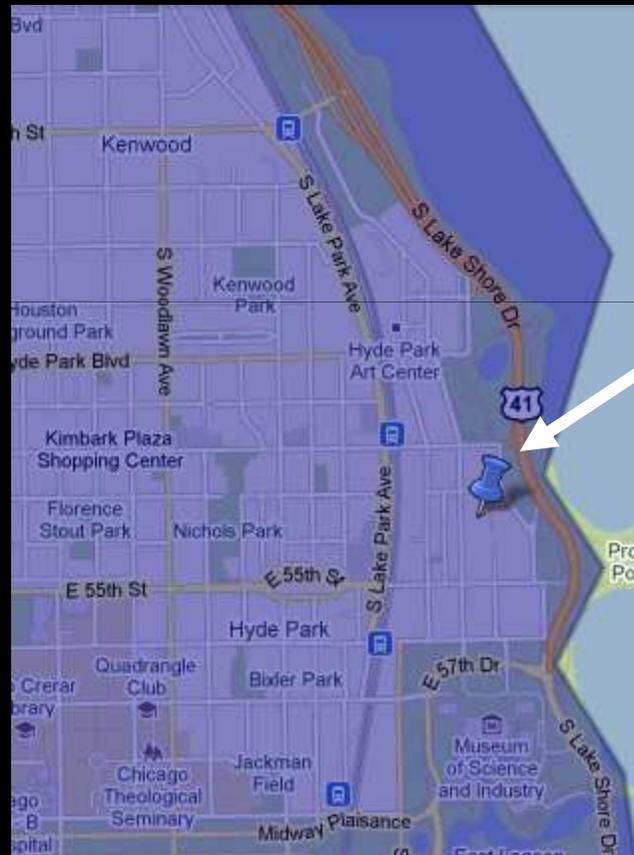
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# Political candidates

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- Can't consider residence



Barack  
Obama's  
house

2000

BRENNAN  
CENTER  
FOR JUSTICE

# Political candidates

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- Can't consider residence



Barack  
Obama's  
house

2000

2002

BRENNAN  
CENTER  
FOR JUSTICE

# Political candidates

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- Can't consider residence
- Can't draw in order to favor/disfavor incumbent, candidate, party
- Can consider party registration/voting information (and may have to, for Voting Rights Act)



Barack  
Obama's  
house

2000

2002

BRENNAN  
CENTER  
FOR JUSTICE

# Political candidates

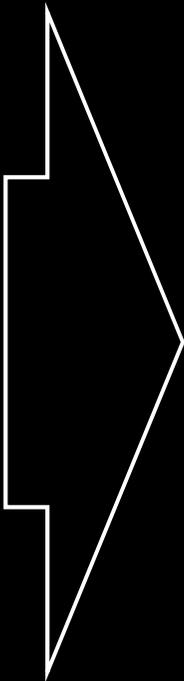
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Commissioners will:

- Need to know that there is information they are not permitted to utilize, and refrain from utilizing that information
- Need to know that having a partisan affiliation is OK, and considering partisan affiliation data is OK, but districts may not be drawn to favor a party

# Where to draw the lines?

---

- Equal population
  - Race
  - Contiguity
  - Political geography
  - Compactness
  - Nesting
  - Political candidates
- 
- Quantitative capacity (at least to review experts and staff)
  - Qualitative capacity (to take testimony and review expertise)
  - Ability to consider and resolve conflicts
  - Ability to be flexible

- 
- Don't discount the value of experience with the redistricting process

# Watch out for natural human tendencies

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- Many people prefer clarity to ambiguity
- Some prefer to spend less mental effort on more ambiguous concepts
- But in some places, the law makes ambiguous concepts just as important as clear ones

(e.g., county boundaries v. community boundaries)

# Watch out for natural human tendencies

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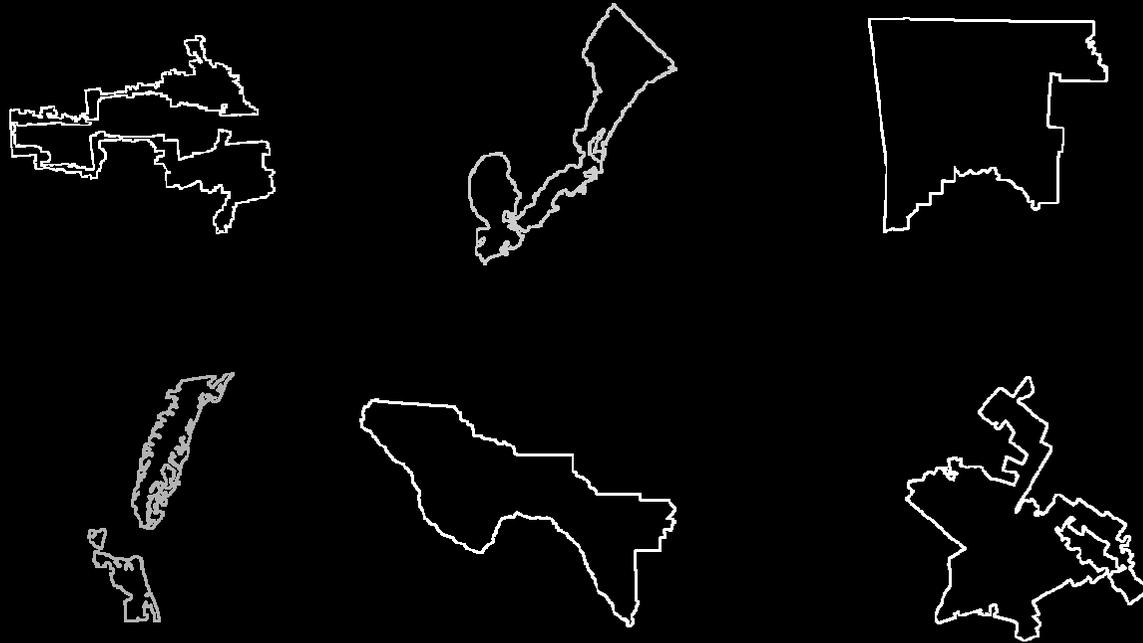
- In difficult choices, many people prefer to constrain their own discretion
- But in some places, the law intentionally leaves discretion, to further other objectives

(e.g., “reasonably equal” population may allow greater compliance with other criteria than strictly equal population)

# Watch out for natural human tendencies

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- Many people have preconceived notions about what “good” looks like



# Watch out for natural human tendencies

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- Many people have preconceived notions about what “good” looks like



# Watch out for natural human tendencies

---

- Many people have preconceived notions about what “good” looks like
- But the law asks for a careful balance of factors that doesn’t privilege any one picture of a good district

# Watch out for learned human tendencies

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- Some people have preconceived notions about what certain redistricting factors mean
- But in some places, the law instructs how a factor should be measured

(e.g., compactness is not about shape, but about nearby areas of population)

# Watch out for learned human tendencies

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- Some people have preconceived notions about what certain redistricting factors mean
- And in other places, the commission as a whole must arrive at a further understanding

(e.g., does “to the extent possible” have the same meaning as “to the extent practicable”)

- 
- These tendencies can all be overcome, but they will be important to keep in mind as you make your final selections

# Today's conversation

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- Why?
- Where?
- What?
- When?
- Who?

# Commissioners draw lines

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- Draw lines

# Commissioners don't just draw lines

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- Draw lines
- Hire (and supervise) staff and counsel
- Establish hearing and public review process
- Coordinate with legislature on hearings and access to data
- Produce report including defined terms / standards
- Defend litigation

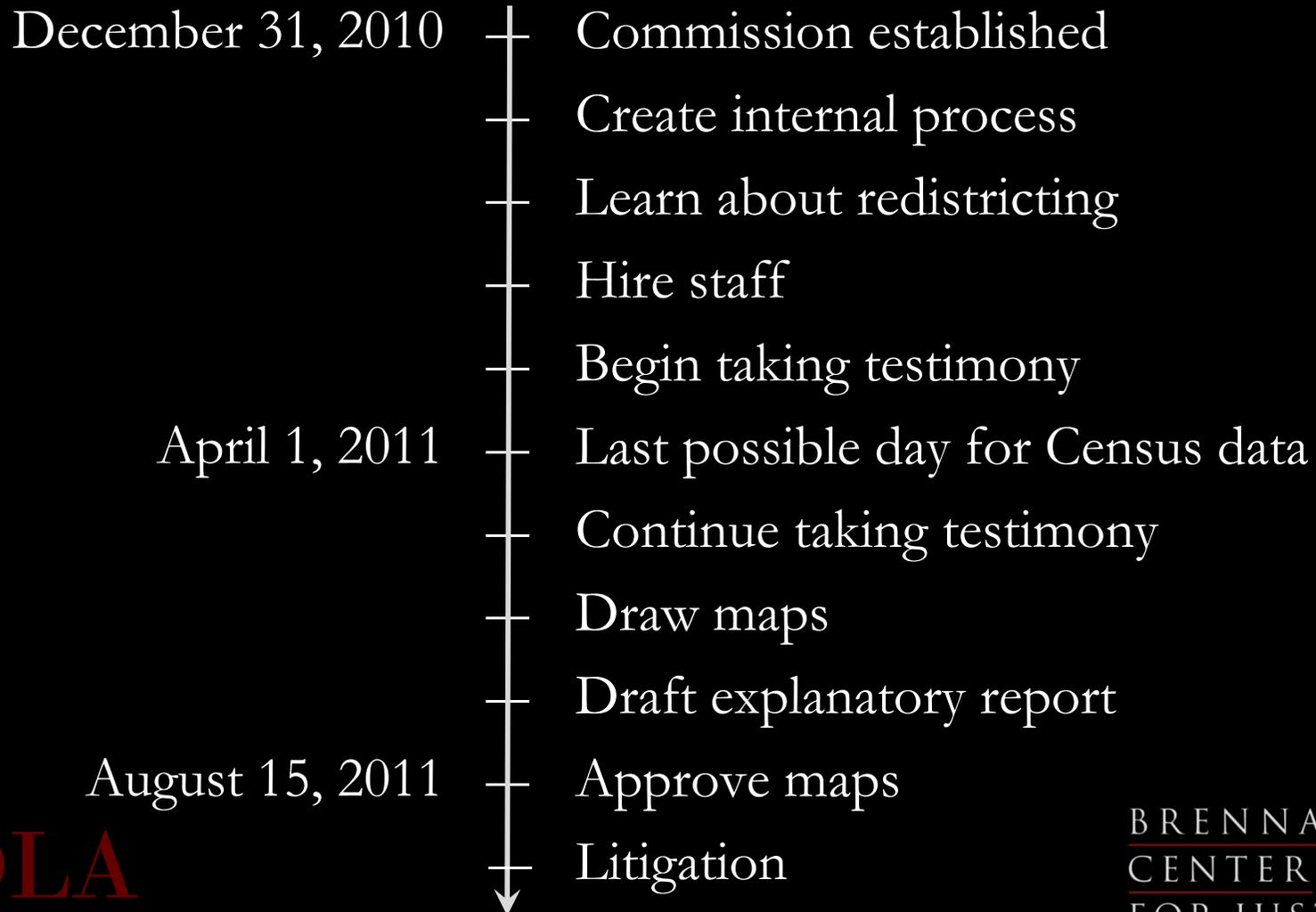
# Today's conversation

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- Why?
- Where?
- What?
- When?
- Who?

# The timeline is quite short

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# Today's conversation

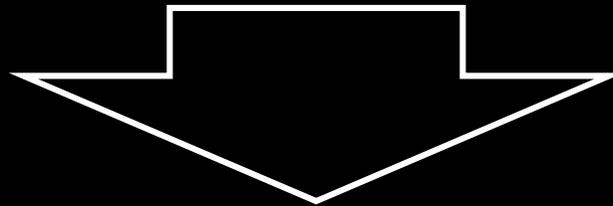
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- Why?
- Where?
- What?
- When?
- Who?

# Qualities to look for

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- Quantitative capacity (at least to review experts and staff)
- Qualitative capacity (to take testimony and review expertise)
- Ability to consider and resolve conflicts
- Ability to think beyond common preconceptions
- Ability to assist with managerial aspect of commission



Particularly given time constraints,  
don't discount experience

# Qualities to look for

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Given the mandated partisan restrictions, ensure that the commission as a whole reflects the state's diversity

- Racial
- Ethnic
- Geographic
- Gender

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Good luck !

# Further information

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Justin Levitt  
Loyola Law School, Los Angeles  
[justin.levitt@lls.edu](mailto:justin.levitt@lls.edu)

Brennan Center for Justice  
[www.brennancenter.org](http://www.brennancenter.org)